



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB0466

Introduced 2/16/2005, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/445

from Ch. 73, par. 1057

Amends the Illinois Insurance Code. Reduces the tax paid by surplus line producers on policies effective prior to July 1, 2003. Requires that the tax rate in effect at the time of the policy effective date shall be the tax rate on all subsequent endorsements for that policy. Requires surplus line producers to file with the Director of Insurance (now, the Secretary of Financial and Professional Regulation) certain information pertaining to submissions made by the producer to the Surplus Line Association of Illinois and at the time of the filing to pay to the Director the required surplus line taxes. Requires surplus line producers to file with the Director certain information pertaining to submissions made by the producer to the Surplus Line Association of Illinois concerning fire insurance policies and at the time of the filing to pay to the Director the taxes required by the Fire Investigation Act. Effective immediately.

LRB094 07126 LJB 37278 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Section 445 as follows:

6 (215 ILCS 5/445) (from Ch. 73, par. 1057)

7 Sec. 445. Surplus line.

8 (1) Surplus line defined; surplus line insurer  
9 requirements. "Surplus line insurance" means insurance on an  
10 Illinois risk of the kinds specified in Classes 2 and 3 of  
11 Section 4 of this Code procured from an unauthorized insurer  
12 after the insurance producer representing the insured or the  
13 surplus line producer is unable, after diligent effort, to  
14 procure said insurance from authorized insurers.

15 "Authorized insurer" means an insurer that holds a  
16 certificate of authority issued by the Director but, for the  
17 purposes of this Section, does not include a domestic surplus  
18 line insurer as defined in Section 445a or any residual market  
19 mechanism.

20 "Residual market mechanism" means an association,  
21 organization, or other entity described in Article XXXIII of  
22 this Code or Section 7-501 of the Illinois Vehicle Code or any  
23 similar association, organization, or other entity.

24 "Unauthorized insurer" means an insurer that does not hold  
25 a valid certificate of authority issued by the Director but,  
26 for the purposes of this Section, shall also include a domestic  
27 surplus line insurer as defined in Section 445a.

28 Insurance producers may procure surplus line insurance  
29 only if licensed as a surplus line producer under this Section  
30 and may procure that insurance only from an unauthorized  
31 insurer:

32 (a) that based upon information available to the

1 surplus line producer has a policyholders surplus of not  
2 less than \$15,000,000 determined in accordance with  
3 accounting rules that are applicable to authorized  
4 insurers; and

5 (b) that has standards of solvency and management that  
6 are adequate for the protection of policyholders; and

7 (c) where an unauthorized insurer does not meet the  
8 standards set forth in (a) and (b) above, a surplus line  
9 producer may, if necessary, procure insurance from that  
10 insurer only if prior written warning of such fact or  
11 condition is given to the insured by the insurance producer  
12 or surplus line producer.

13 Insurance producers shall not procure from an unauthorized  
14 insurer an insurance policy:

15 (i) that is designed to satisfy the proof of financial  
16 responsibility and insurance requirements in any Illinois  
17 law where the law requires that the proof of insurance is  
18 issued by an authorized insurer or residual market  
19 mechanism;

20 (ii) that covers the risk of accidental injury to  
21 employees arising out of and in the course of employment  
22 according to the provisions of the Workers' Compensation  
23 Act; or

24 (iii) that insures any Illinois personal lines risk, as  
25 defined in subsection (a), (b), or (c) of Section 143.13 of  
26 this Code, that is eligible for residual market mechanism  
27 coverage, unless the insured or prospective insured  
28 requests limits of liability greater than the limits  
29 provided by the residual market mechanism. In the course of  
30 making a diligent effort to procure insurance from  
31 authorized insurers, an insurance producer shall not be  
32 required to submit a risk to a residual market mechanism  
33 when the risk is not eligible for coverage or exceeds the  
34 limits available in the residual market mechanism.

35 Where there is an insurance policy issued by an authorized  
36 insurer or residual market mechanism insuring a risk described

1 in item (i), (ii), or (iii) above, nothing in this paragraph  
2 shall be construed to prohibit a surplus line producer from  
3 procuring from an unauthorized insurer a policy insuring the  
4 risk on an excess or umbrella basis where the excess or  
5 umbrella policy is written over one or more underlying  
6 policies.

7 (2) Surplus line producer; license. Any licensed producer  
8 who is a resident of this State, or any nonresident who  
9 qualifies under Section 500-40, may be licensed as a surplus  
10 line producer upon:

11 (a) completing a prelicensing course of study. The  
12 course provided for by this Section shall be conducted  
13 under rules and regulations prescribed by the Director. The  
14 Director may administer the course or may make  
15 arrangements, including contracting with an outside  
16 educational service, for administering the course and  
17 collecting the non-refundable application fee provided for  
18 in this subsection. Any charges assessed by the Director or  
19 the educational service for administering the course shall  
20 be paid directly by the individual applicants. Each  
21 applicant required to take the course shall enclose with  
22 the application a non-refundable \$20 application fee  
23 payable to the Director plus a separate course  
24 administration fee. An applicant who fails to appear for  
25 the course as scheduled, or appears but fails to complete  
26 the course, shall not be entitled to any refund, and shall  
27 be required to submit a new request to attend the course  
28 together with all the requisite fees before being  
29 rescheduled for another course at a later date; and

30 (b) payment of an annual license fee of \$400; and

31 (c) procurement of the surety bond required in  
32 subsection (4) of this Section.

33 A surplus line producer so licensed shall keep a separate  
34 account of the business transacted thereunder which shall be  
35 open at all times to the inspection of the Director or his  
36 representative.

1 The prelicensing course of study requirement in (a) above  
 2 shall not apply to insurance producers who were licensed under  
 3 the Illinois surplus line law on or before January 1, 2002.

4 (3) Taxes and reports.

5 (a) Surplus line tax and penalty for late payment.

6 For each policy or contract of insurance issued under  
 7 his or her license, and any subsequent endorsements  
 8 thereto, a surplus line producer shall compute a surplus  
 9 line tax based on the gross premium less returned premium  
 10 according to the following table:

<u>Policy Effective Date</u>	<u>Tax Rate</u>
<u>Prior to July 1, 2003</u>	<u>3.0%</u>
<u>July 1, 2003 &amp; thereafter</u>	<u>3.5%</u>

14 The tax rate in effect on the policy effective date  
 15 shall apply to the policy and to all subsequent  
 16 endorsements for that policy.

17 A surplus line producer shall file with the Director on  
 18 or before February 1 and August 1 of each year a report in  
 19 the form prescribed by the Director on all surplus line  
 20 insurance policies and endorsements filed with the Surplus  
 21 Line Association of Illinois pursuant to subsection (5) of  
 22 this Section ~~procured from unauthorized insurers~~ during  
 23 the preceding 6 month period ending December 31 or June 30  
 24 respectively, and on the filing of such report shall pay to  
 25 the Director for the use and benefit of the State the  
 26 surplus line taxes for the reported policies and  
 27 endorsements. At no time shall a surplus line producer pay  
 28 surplus line tax that is different than the tax computed at  
 29 the rate that was in effect at the time of that policy's  
 30 inception. a sum equal to 3.5% of the gross premiums less  
 31 returned premiums upon all surplus line insurance procured  
 32 or cancelled during the preceding 6 months.

33 Any surplus line producer who fails to pay the full  
 34 amount due under this subsection is liable, in addition to  
 35 the amount due, for such penalty and interest charges as  
 36 are provided for under Section 412 of this Code. The

1 Director, through the Attorney General, may institute an  
2 action in the name of the People of the State of Illinois,  
3 in any court of competent jurisdiction, for the recovery of  
4 the amount of such taxes and penalties due, and prosecute  
5 the same to final judgment, and take such steps as are  
6 necessary to collect the same.

7 (b) Fire Marshal Tax.

8 Each surplus line producer shall file with the Director  
9 on or before March 31 of each year a report in the form  
10 prescribed by the Director on all fire insurance policies  
11 and endorsements filed with the Surplus Line Association of  
12 Illinois pursuant to subsection (5) of this Section during  
13 the preceding calendar year and ~~procured from unauthorized~~  
14 ~~insurers~~ subject to tax under Section 12 of the Fire  
15 Investigation Act and shall pay to the Director the fire  
16 marshal tax required thereunder for the reported policies  
17 and endorsements. At no time shall a surplus line producer  
18 pay fire marshal tax relating to a surplus line insurance  
19 policy or endorsement that is different than the tax  
20 computed at the rate that was in effect at the time of that  
21 policy's inception.

22 (c) Taxes and fees charged to insured. The taxes  
23 imposed under this subsection and the countersigning fees  
24 charged by the Surplus Line Association of Illinois may be  
25 charged to and collected from surplus line insureds.

26 (4) Bond. Each surplus line producer, as a condition to  
27 receiving a surplus line producer's license, shall execute and  
28 deliver to the Director a surety bond to the People of the  
29 State in the penal sum of \$20,000, with a surety which is  
30 authorized to transact business in this State, conditioned that  
31 the surplus line producer will pay to the Director the tax,  
32 interest and penalties levied under subsection (3) of this  
33 Section.

34 (5) Submission of documents to Surplus Line Association of  
35 Illinois. A surplus line producer shall submit every insurance  
36 contract issued under his or her license to the Surplus Line

1 Association of Illinois for recording and countersignature.  
2 The submission and countersignature may be effected through  
3 electronic means. The submission shall set forth:

4 (a) the name of the insured;

5 (b) the description and location of the insured  
6 property or risk;

7 (c) the amount insured;

8 (d) the gross premiums charged or returned;

9 (e) the name of the unauthorized insurer from whom  
10 coverage has been procured;

11 (f) the kind or kinds of insurance procured; and

12 (g) amount of premium subject to tax required by  
13 Section 12 of the Fire Investigation Act.

14 Proposals, endorsements, and other documents which are  
15 incidental to the insurance but which do not affect the premium  
16 charged are exempted from filing and countersignature.

17 The submission of insuring contracts to the Surplus Line  
18 Association of Illinois constitutes a certification by the  
19 surplus line producer or by the insurance producer who  
20 presented the risk to the surplus line producer for placement  
21 as a surplus line risk that after diligent effort the required  
22 insurance could not be procured from authorized insurers and  
23 that such procurement was otherwise in accordance with the  
24 surplus line law.

25 (6) Countersignature required. It shall be unlawful for an  
26 insurance producer to deliver any unauthorized insurer  
27 contract unless such insurance contract is countersigned by the  
28 Surplus Line Association of Illinois.

29 (7) Inspection of records. A surplus line producer shall  
30 maintain separate records of the business transacted under his  
31 or her license, including complete copies of surplus line  
32 insurance contracts maintained on paper or by electronic means,  
33 which records shall be open at all times for inspection by the  
34 Director and by the Surplus Line Association of Illinois.

35 (8) Violations and penalties. The Director may suspend or  
36 revoke or refuse to renew a surplus line producer license for

1 any violation of this Code. In addition to or in lieu of  
2 suspension or revocation, the Director may subject a surplus  
3 line producer to a civil penalty of up to \$2,000 for each cause  
4 for suspension or revocation. Such penalty is enforceable under  
5 subsection (5) of Section 403A of this Code.

6 (9) Director may declare insurer ineligible. If the  
7 Director determines that the further assumption of risks might  
8 be hazardous to the policyholders of an unauthorized insurer,  
9 the Director may order the Surplus Line Association of Illinois  
10 not to countersign insurance contracts evidencing insurance in  
11 such insurer and order surplus line producers to cease  
12 procuring insurance from such insurer.

13 (10) Service of process upon Director. Insurance contracts  
14 delivered under this Section from unauthorized insurers, other  
15 than domestic surplus line insurers as defined in Section 445a,  
16 shall contain a provision designating the Director and his  
17 successors in office the true and lawful attorney of the  
18 insurer upon whom may be served all lawful process in any  
19 action, suit or proceeding arising out of such insurance.  
20 Service of process made upon the Director to be valid hereunder  
21 must state the name of the insured, the name of the  
22 unauthorized insurer and identify the contract of insurance.  
23 The Director at his option is authorized to forward a copy of  
24 the process to the Surplus Line Association of Illinois for  
25 delivery to the unauthorized insurer or the Director may  
26 deliver the process to the unauthorized insurer by other means  
27 which he considers to be reasonably prompt and certain.

28 (10.5) Insurance contracts delivered under this Section  
29 from unauthorized insurers, other than domestic surplus line  
30 insurers as defined in Section 445a, shall have stamped or  
31 imprinted on the first page thereof in not less than 12-pt.  
32 bold face type the following legend: "Notice to Policyholder:  
33 This contract is issued, pursuant to Section 445 of the  
34 Illinois Insurance Code, by a company not authorized and  
35 licensed to transact business in Illinois and as such is not  
36 covered by the Illinois Insurance Guaranty Fund." Insurance

1 contracts delivered under this Section from domestic surplus  
2 line insurers as defined in Section 445a shall have stamped or  
3 imprinted on the first page thereof in not less than 12-pt.  
4 bold face type the following legend: "Notice to Policyholder:  
5 This contract is issued by a domestic surplus line insurer, as  
6 defined in Section 445a of the Illinois Insurance Code,  
7 pursuant to Section 445, and as such is not covered by the  
8 Illinois Insurance Guaranty Fund."

9 (11) The Illinois Surplus Line law does not apply to  
10 insurance of property and operations of railroads or aircraft  
11 engaged in interstate or foreign commerce, insurance of  
12 vessels, crafts or hulls, cargoes, marine builder's risks,  
13 marine protection and indemnity, or other risks including  
14 strikes and war risks insured under ocean or wet marine forms  
15 of policies.

16 (12) Surplus line insurance procured under this Section,  
17 including insurance procured from a domestic surplus line  
18 insurer, is not subject to the provisions of the Illinois  
19 Insurance Code other than Sections 123, 123.1, 401, 401.1, 402,  
20 403, 403A, 408, 412, 445, 445.1, 445.2, 445.3, 445.4, and all  
21 of the provisions of Article XXXI to the extent that the  
22 provisions of Article XXXI are not inconsistent with the terms  
23 of this Act.

24 (Source: P.A. 92-386, eff. 1-1-02; 93-29, eff. 6-20-03; 93-32,  
25 eff. 7-1-03; 93-876, eff. 8-6-04.)

26 Section 99. Effective date. This Act takes effect upon  
27 becoming law.